

STATE BAR TRUSTS & ESTATES SECTION

LEGISLATIVE PROCEDURES

June 2005

This document sets forth the procedures our Executive Committee will use in connection with proposing and monitoring legislation. It first discusses procedures relating to our proposals. It then discusses monitoring proposed legislation (both our proposals and other proposals). It includes the following exhibits:

- Exhibit A Sample Proposed Letter to State Bar (for Proposal 200501)
- Exhibit B Lifecycle of a Bill Diagram
- Exhibit C Tentative 2005-06 Regular Session Legislative Calendar
- Exhibit D Sample lengthy position letter (AB 12)
- Exhibit E Sample short position Letter (SB3 90)
- Exhibit F Sample Letter from Larry Doyle to Legislators (SB 390)
- Exhibit G Proposed ExComm Bill Tracking Sheet

When this document refers to activities of the legislative chair, those activities may in some instances also be carried out by the legislative vice chair.

1. I. Our Proposals

2. A. Tracking Projects

The subcommittee chairperson or designated drafter must send a draft of the proposal (in advance of the formal vote at the meeting, if possible) to the legislative chair for review and comment. The proposal letter must be directed to the appropriate State Bar Staff Attorney, currently Saul Berkovitch. (See Exhibit "A.") After review and approval, the drafting person prepares the final draft for the ExComm vote. Once approved, the final proposal is sent to Larry Doyle, the legislative chair, legislative vice chair, chair and vice chair. We will assign internal project numbers only when a proposal is in legislative format and ExComm has approved submission of the proposal to the State Bar. The legislative chair will maintain a list of each proposal project and what ExComm subcommittee is handling the project. This list tracks when the matters became legislative projects and were approved by ExComm to move forward as pending proposals to the State Bar Board of Governors (BOG).

3. B. Sending Proposals to Board of Governors

During the last week of July, the legislative chair reviews all proposals that were approved for submission to the BOG and sends them in one packet to Larry Doyle.

Those proposals include proposals from prior years that may not have found authors. The legislative chair determines the meeting at which the BOG is considering our proposals, and whether any proposals are not on the consent calendar or comment is expected from another State Bar section (in which event the action must be discussed with Larry Doyle and we also may work with our BOG liaison to ensure that the BOG hears our position). Our proposals are almost always on the BOG consent calendar.

4. II. **Monitoring Legislation**

5. A. Review of Bills

Exhibits "B" and "C" show the legislative bill lifecycle and the current regular session tentative calendar, respectively. The legislative chair will review proposed legislation weekly for both new legislation and amendments to existing bills. The legislative chair will forward any bills that might reasonably pertain to a subcommittee (by e-mail) to the substantive subcommittee chair, with a copy to Larry Doyle, the legislation vice chair, the chair and the vice chair. (The vast majority of bills are introduced near the end of February, but amendments and spot bills must be monitored after that point.)

Within two (2) weeks of receiving this information, the subcommittee chairs will inform the legislative chair (by e-mail) regarding which bills the subcommittee will (a) propose for an ExComm position, (2) intends to follow, or (3) intends not to follow. Most of the bills that will not be monitored can be identified early. It sometimes takes more time to convene a subcommittee meeting to determine whether (or how) to comment, or whether to simply follow a bill. The legislative chair will calendar the subcommittee follow up reply and do a follow up e-mail if no response is received.

6. B. ExComm Positions Regarding Bills

If possible, depending on the timelines, the subcommittee then takes its position to ExComm for a full ExComm vote. If there is not sufficient time, the subcommittee chair takes the subcommittee's position to the chair and vice chair and obtains approval from the chair to present the position of the subcommittee, with the understanding that the position will be taken to ExComm at the next ExComm meeting. Once ExComm takes a position, an update of the ExComm vote will be provided to Larry Doyle. ExComm positions regarding bills can be as follows:

1. Support
2. Support if amended
3. Oppose
4. Oppose unless amended

Once ExComm votes to take a position on a bill, the subcommittee then assigns a point person and back-up person to prepare the draft ExComm position and to provide legislative responses. The subcommittee chair gives this information to the legislative

chair, who prepares a Legislative Bill Tracking Sheet that includes a summary of the bill, the subcommittee contact information, and information regarding hearings, amendments and bill status. (See Exhibit "G.") That sheet will be posted on our internal website. Once the position is drafted, it is forwarded to the legislative chair, legislative vice chair, chair and vice chair. The legislative chair and legislative vice chair provide any comments for corrections to the draft and then submit the draft to Larry Doyle. The legislative chair also determines whether there is a specific desire for someone on the subcommittee to testify or to determine that either the legislative chair or legislative vice chair will cover all testimony.

The legislative subcommittee chair includes the legislative chair or the legislative vice chair on further meetings of that subcommittee regarding the bill so that the legislative chair and legislative vice chair are familiar with the issues and can easily negotiate and testify. If they cannot participate in this conference, they are sent a summary of the meeting. All e-mails related to that bill are copied to the legislative chair and legislative vice chair, and the chair and vice chair. For each ExComm meeting, the legislative chair creates a listing of each of the bills (1) we proposed, (2) on which we are taking a position, or (3) that we are following. That listing provides which subcommittee has the responsibility for following that legislation.

Exhibits "D" and "E" respectively show sample ExComm position letters, and Exhibit "F" shows a sample letter from Larry Doyle to a legislator conveying our position. Prompt ExComm position letters are critical because (1) we cannot testify regarding a bill until we have a letter on file, and (2) the sooner in we get our position letter to Larry Doyle the sooner he can get our position on file to avoid last-minute surprises. All position letters and other communications with legislators must go through Larry Doyle. In many instances we have participated in the bill negotiation process without a formal position letter on file. We should have our letter on file before participating in this process (at least to any significant degree) because this will allow us to appear at a hearing if for some reason the negotiations are not going our way. Once a bill is out of committee, there are no more hearings at which we can testify. Therefore, we need to watch the legislative calendar carefully and be particularly diligent during the hearing periods. The earlier we get involved in monitoring and negotiating bills, the more effective we will be.

2. C. Tracking Bills

After ExComm has voted to follow or comment on a bill, the legislative chair will add the bill to our bill list, subscribed to the bill, and update Larry Doyle on the bill list. The legislative chair will then notify (by e-mail) the ExComm point person regarding any hearing or significant developments regarding the bill. The point person will also subscribe to the bill in order to monitor its progress. The legislative chair, legislative vice chair and each point person will also receive from Larry Doyle (by automatic e-mail) the weekly hearing calendar. This redundancy in the process is designed to help avoid overlooking hearings or other significant developments.

3. D. Addressing Legislative Staff Questions

The legislative chair will provide legislative staff with the point person contact information for ExComm sponsored bills. When the legislative chair receives questions from the legislative staff or counsel about our positions or our sponsored bills, the legislative chair forwards the questions to the point person and back-up person, with a copy to Larry Doyle, the chair and vice chair, and legislative vice chair. The legislative chair lets that point person know when a response is expected and calendars that response. (We will normally apply a 24 hour rule in this regard because of the short-timelines under which the legislative staff are often working.) The responding person should directly contact legislative staff or counsel making the request, with a copy of e-mails or summary of telephone conversations being sent by e-mail to the legislative chair and vice chair. If we cannot meet our deadline for some reason or one of our members indicates that it will take until the following day, the legislative chair will get back to the legislative staff or counsel and let that person know that we were working on our response and will respond the following day. They generally appreciate the response and are accommodating in those circumstances, although sometimes they have a deadline and they need a response sooner. In those circumstances, either the point person or back-up point person need to accommodate legislative staff (we have had some extraordinary efforts by many ExComm members who have provided the kind of under-the-gun responses one would expect to be reserved for their best clients), or the legislative chair or legislative vice chair has to step in and give the response.

2. E. Hearings

The legislative chair coordinates calendars with Larry Doyle. The legislative chair also coordinates calendars with the legislative vice chair or verifies that the subcommittee member who has a substantive reason for appearing has the bill calendared and will appear. For budgetary reasons, we discourage committee members outside the area from appearing. After a hearing or legislative action, the legislative chair informs the subcommittee chair (or the entire committee if the governor signed our bill) regarding the result.

EXHIBIT A

Sample Proposed Letter to State Bar (for 200501)

EXHIBIT B

Lifecycle of a Bill Diagram

EXHIBIT C

Tentative 2005-06 Regular Session Legislative Calendar

EXHIBIT D

Sample Lengthy Position Letter (AB 12)

EXHIBIT E

Sample Short Position Letter (SB 390)

EXHIBIT F

Sample Letter from Larry Doyle to Legislators (SB 390)

EXHIBIT G

Proposed ExComm Bill Tracking Sheet